

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2325 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

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HEIRS OF DECEASED PASHABHAI BHANBHAI VANKAR

Versus

STATE OF GUJARAT

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Appearance:

Shri A.J. Patel, Advocate, for the Petitioners

Shri M.R. Anand, Senior Counsel (Government  
Pleader), with Shri T.H. Sompura, Asst. Govt.  
Pleader, for the Respondent

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 27/06/96

ORAL JUDGEMENT

The order passed by the Deputy Collector at Baroda on 7th December 1985 as affirmed in appeal by the order passed by the Collector of Baroda on 19th June 1986

in Land Appeal No. 1 of 1986 as affirmed in revision by the order passed by the Additional Secretary, Revenue Department at Ahmedabad on behalf of the State of Gujarat (the respondent herein) on 12th February 1988 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, the Deputy Collector at Baroda confiscated one parcel of land bearing survey No. 136 (Final Plot No. 69) admeasuring 1411 square meters situated at village Vasna-Saiyed, taluka Vadodara (the disputed land for convenience).

2. The facts giving rise to this petition move in a narrow compass. The disputed land was regranted to the predecessor-in-title of the present petitioners (the deceased for convenience) by the order passed on 12th/23rd January 1964 by the Assistant Collector at Vadodara. Its copy is at Annexure A to this petition. The regrant was on the condition of its non-transferability and impartibility. It appears that it was included in one town planning scheme framed under the law relating to town planning. The original area of the land was 0 acre 19 gunthas and it was assigned official plot No. 69 in the town planning scheme and it measured 1411 square meters. It appears that in the meantime the deceased breathed his last some time on 11th November 1983 leaving behind him the present petitioners as his heirs and legal representatives. They appear to have obtained what is popularly known as the development permission under sec. 29 of the Gujarat Town Planning and Urban Development Act, 1976 (the TP Act for brief). Pursuant thereto, they appear to have started construction activity through their power-of-attorney-holder. This construction activity appears to have come to the notice of the concerned officer in the office of the Collector of Vadodara. Thereupon the Deputy Collector at Vadodara issued one show-cause notice on 28th October 1985 calling upon the petitioners through their power-of-attorney-holder to show cause why the land should not be confiscated to and resumed by the Government for raising construction therein in breach of the conditions attached to grant thereof. Its copy is at Annexure B to this petition. It appears that prior thereto an application was made on 19th December 1983 for conversion of the land from new tenure to old tenure. No reply appears to have been filed to the aforesaid show-cause notice. Thereafter, by the order passed on 7th December 1985, the Deputy Collector ordered confiscation of the disputed land to the government on the ground of breach of condition attached to the order of grant. Its copy is at Annexure C to this petition. The aggrieved petitioners carried

the matter in appeal before the Collector of Vadodara under sec. 203 of the Bombay Land Revenue Code, 1879 (the Code for brief). It came to be registered as Appeal No. 1 of 1986. By his order passed on 19th June 1986 in the aforesaid appeal, the Collector of Vadodara dismissed it. Its copy is at Annexure D to this petition. The aggrieved petitioners carried the matter in revision before the respondent under sec. 211 of the Code. By the order passed by and on behalf of the respondent on 12th February 1988, the respondent rejected the revisional application. Its copy is at Annexure E to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 227 of the Constitution.

3. Learned Counsel Shri Anand for the respondents has urged that this petition under art. 227 of the Constitution of India is not maintainable. Thereupon learned Advocate Shri Patel for the petitioners has orally prayed for treating this petition as also under art. 226 of the Constitution of India. This prayer is accepted and this petition is ordered to be treated as also under art. 226 of the Constitution of India on the condition of payment of the deficit court-fees, if any, within 15 days from today.

4. Learned Advocate Shri Patel for the petitioners has urged that there was no condition attached to the order of regrant that the disputed land shall be used only for agricultural purposes and for no other purpose without the previous sanction of the Collector or any other authority. In that view of the matter, runs the submission of Shri Patel for the petitioners, the impugned orders are without authority of law and they are therefore null and void. As against this, Senior Government Counsel Shri Anand for the respondent has urged that the disputed land was granted to the deceased as a new tenure land of non-transferable and impartible character. It would mean, according learned Government Counsel Shri Anand, that the grantee could not use it for any purpose other than agricultural purpose without the previous sanction from the concerned Collector.

5. As pointed out hereinabove, the order of grant of the disputed land in favour of the deceased is at Annexure A to this petition. It transpires therefrom that the land was in his possession prior to its abolition presumably under the Bombay Merged Territories Miscellaneous Alienation Act, 1955 (the Alienation Act for brief). It appears to have been regranted to him under sec. 7(2) thereof read with its proviso as

transpiring from the order at Annexure A to this petition. Sub-section (3) thereof is relevant for the present purpose. It reads:

"(3) the occupancy of the land regranted under clause (2) shall not be transferable or partible by metes and bounds without the previous sanction of the Collector and except on payment of such amount as the State Government may by general or special order determine."

It becomes clear from its bare perusal that the land regranted under sub-section (2) thereof would be neither transferable nor partible by metes and bounds without the previous sanction of the Collector and except on payment of such amount as the State Government may by general or special order determine. In fact, the disputed land is regranted inter alia to the deceased only on those conditions and on no other conditions. It has clearly been specified in the order at Annexure A to this petition that the land is granted on the condition of non-transferability and impartibility. It contains no other condition like the condition that it is granted only for agricultural purposes or that it shall not be used for any purpose other than agricultural purposes without the previous sanction of the concerned Collector or any other authority. It is not the case of the respondent or any of its officers that the petitioners have tried to transfer their interest or any part thereof in favour of any one at this stage. The allegation against the petitioners is that they have made construction in the disputed land without obtaining the previous permission from the concerned collector and thereby have made a breach of the conditions attached to the order of grant. As pointed out hereinabove, no such condition is attached to the regrant of the disputed land to the deceased by the order at Annexure A to this petition. In that view of the matter, by raising construction in the disputed land after obtaining the necessary development permission under sec. 29 of the TP Act, the petitioners cannot be said to have made any breach of the conditions attached to the order at Annexure A to this petition. The action of the authorities below can therefore be said to be without any authority of law. It cannot be sustained in law.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure C to this petition as affirmed in appeal by the order at Annexure D to this petition as affirmed in revision by the order at Annexure E to this petition cannot be sustained in law.

It has to be quashed and set aside.

7. In the result, this petition is accepted. The order passed by the Deputy Collector at Vadodara on 7th December 1985 at Annexure C to this petition as affirmed in appeal by the order passed by the Collector of Vadodara on 19th June 1986 in Land Appeal No. 1 of 1986 at Annexure D to this petition as affirmed in revision by the order passed by and on behalf of the State Government on 12th February 1988 at Annexure E to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.

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